



2024:DHC:8204



\$~1(SB) to 3(SB)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18th October, 2024

+ **W.P.(C) 705/2020 & CM APPLs.15612-13/2022**
SH. HANSRAJ AND ORS.Petitioners

Through: Mr. F K Jha & Mr. Gaurav Jha,
Advts. (M: 9810055432)

versus

EMPLOYEES STATE INSURANCE
CORPORATION AND ORS.Respondents

Through: Mr. Manish Kumar Saran, Ms.
Rashmi Malhotra, Mr. Amrendra
Kumar and Ms. Ananya Tyagi, Advts.
with Mr. Akshay Kala, Insurance
Commissioner in person. (M:
9818539397)

2(SB) WITH
+ **W.P.(C) 5691/2021 & CM APPL.17784/2021**
PRAVEEN KUMAR AND ORS.Petitioners

Through: None.
versus

EMPLOYEES STATE INSURANCE
CORPORATION AND ORS.Respondents

Through: Mr. Manish Kumar Saran, Ms.
Rashmi Malhotra and Ms. Ananya
Tyagi, Advts. with Mr. Akshay Kala,
Insurance Commissioner in person.

3(SB) AND
+ **W.P.(C) 16305/2022 & CM APPL.51055/2022**
HINDUSTAN ENGINEERING AND GENERAL MAJDOOR
UNION THROUGH ITS GENERAL SECRETARYPetitioner

Through: Mr. Soumyajit Pani, & Mr. Aishwary
Bajpai, Advts. (M: 9536081380)

versus



2024:DHC:8204



EMPLOYEES STATE INSURANCE
CORPORATION AND ORS.

.....Respondents

Through: Mr. Manish Kumar Saran, Ms.
Rashmi Malhotra and Ms. Ananya
Tyagi, Advs. with Mr. Akshay Kala,
Insurance Commissioner in person.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

PRATHIBA M. SINGH, J.

1. This hearing has been done through hybrid mode.
2. The present petitions have been filed on behalf of the Petitioners/Workmen (*hereinafter*, 'Workmen') who were contractually employed with the Employees' State Insurance Corporation Hospital, Basai Darapur, Delhi.
3. The grievance of the Workmen is that their services were illegally terminated by the Respondent Authorities, under the pretext of changing the contractor. Accordingly, the Workmen have approached this Court praying for reinstatement in service, as also, for a direction to the Respondent Authorities to give preference to them over fresh contractual employees.
4. Notice was issued in this matter on 22nd January, 2020. On 27th November, 2020, the Court was informed that a new contractor, namely, M/s WAPCOS Limited had been appointed by the Respondent authorities. The new contractor was therefore, sought to be impleaded in the matter and the previous contractor, namely M/s UP Rajkiya Nirman Nigam Ltd. along with the sub-contractor namely, M/s HST Enterprises were deleted from the array of parties.



5. On 20th May, 2021 the Employees' State Insurance Corporation (*hereinafter, the 'ESIC'*) had taken the position that they have no objection if the Workmen are accommodated by the new Contractor, M/s WAPCOS Ltd. subject to them fulfilling the eligibility criteria. However, thereafter, on 25th May, 2021, Id. Counsel for M/s WAPCOS Ltd. submitted that the new Contractor is only a consultancy agency and in fact, M/s WAPCOS had sub-contracted the employment of contractual employees to one, M/s Shri Krishna and Co., w.e.f. 15th May, 2021. In view of this submission, the Court on 25th May, 2021 observed that the present matter requires further consideration and directed affidavits to be filed by M/s WAPCOS, as also the Respondent No.5-M/s HST Enterprises, explaining the following:

“(i) What are the terms of the tender on the basis of which it has been allotted to M/s WAPCOS and whether subcontracting is permissible under the terms of the tender?”

“(ii) As per the tender, which is the entity which is releasing payments to the contractual workmen?”

“(iii) Whether under the tender there is any condition that the new contractor ought to accommodate the earlier workmen who are already working in the establishment and if so, whether the same is looked into by the ESIC?”

“(iv) What is the role of a tenderer such as M/s WAPCOS in such a matter and whether M/s WAPCOS was specifically permitted to subcontract the providing of contractual workmen?”

“(v) What are the total number of posts which are sanctioned and the list of employees who have been employed currently at the site.”

“(vi) How many of the old employees were in fact offered employment and employed by the new contractor/sub-contractor?”



6. The Court was also of the opinion that the Employees' State Insurance Corporation (*hereinafter, the 'ESIC'*) being one of the largest employers in the country ought to have brought a policy for all the establishments under the ESIC in respect of such contractual workers. Accordingly, several orders have been passed by this Court, from time to time, towards framing of a broad policy with respect to the Workmen and their employment, in all the establishments of the ESIC.

7. On 7th October, 2021, an email had been placed on record, on behalf of the ESIC, stating that a committee had been constituted by the ESIC for suggesting a draft policy in respect of its contractual employees and a report by the said committee was stated to be placed before the Standing Committee of the ESIC. The said Report was directed to be placed before this Court, in a sealed cover. The ESIC was further directed to place on record the contracts entered into by it with the previous contractors, sub-contractors as also the new contractors. The relevant portion of the order dated 7th October, 2021 is extracted hereinunder:

"2. Further to the last order dated 12th August 2021, an email has been placed on record on behalf of the ESIC, stating that a Committee has been constituted for suggesting a draft policy in respect of contractual employees. A report is stated to have been submitted by the said Committee, and the same is likely to be placed before the Standing Committee of the Corporation in December, 2021.

3. Mr. Abhik, ld. Counsel for ESIC, today, submits that he is willing to place the said report in a sealed cover before the Court. Let the same be filed, scanned and placed before the Court. It is made clear that no copies of the said report shall be supplied to either of the parties, until the same is perused by the Court.



4. The ESIC shall also place on record the contracts, which it has entered into with the new contractors who are currently providing the contractual workers. It shall also place on record the contracts which have previously been entered into with Respondent Nos. 3,4,5 & 6, including any sub-contracts therein.

8. In terms of the order dated 7th October, 2021 Id. Counsel for the ESIC handed over the draft policy with respect to contractual employees of the ESIC to the Court on 8th December, 2021 and the same was retained in a sealed cover. However, it was the submission of the Id. Counsel that the said policy had not been approved by the standing committee of the ESIC and hence cannot be placed on record. Accordingly, the Court directed that the said policy be placed on record by the next date of hearing. It was further directed that a complete list of all workers supplied by Respondent No. 5-M/s HST Enterprises, along with the dates from when they have been working with the ESIC, be placed on record within 2 weeks. The relevant portion of the order dated 8th December, 2021 is extracted hereinunder:

“3. Today, Mr. Abhik, has placed on record a purported draft Policy in respect of the contractual employees of the ESIC. The said Policy is stated to have not been approved. He submits that the Standing Committee has deferred the decision of ratification of the said draft as this matter is subjudice before this court.

4. The draft Policy submitted by Mr. Abhik is retained with the Court in the sealed cover. It is made clear that before the next date of hearing, the said draft Policy may be put up and considered by the Standing Committee, irrespective of the pendency of these writ petitions and a decision be taken as to whether the draft Policy is to be approved or not. The said decision



shall be placed on record by the Regional Director, ESIC by the next date of hearing.

5. Vide the last order, this Court had also directed Mr. Abhik, ld. Counsel for the ESIC to decide the representations submitted by the workers, and place on record the said decision, however a decision in respect thereof has also not been placed on record Accordingly, let the same be placed on record within two weeks.

6. On a query from the Court Mr. Gaur, ld. Counsel for the subcontractor submits that there are a total of 85 employees that are being supplied by him to work with the ESIC. There are 79 sanctioned posts, however Mr. Nishant, ld. Counsel for the Contractor submits that 6 of the employees are working as relievers.

7. Let a complete list of all workers supplied by this contractor/subcontractor, along with the dates from when they have been working with the ESIC, be placed on record within 2 weeks.

9. The present case was then taken up for hearing on 23rd December, 2021, wherein, in terms of the order dated 8th December, 2021, the list of workers supplied by the Respondent No. 5 to the ESIC was handed over to the Court. On a perusal of the said list, the Court observed that out of 85 employees, the date of joining and qualification requirement had not been mentioned *qua* 72 employees. Further, the Court noticed that, ESIC was continuously changing contractors and old employees, who had worked with the ESIC for 10 to 15 years, were discontinued from employment without any reason. Under these circumstances, the Court observed that it was necessary to ascertain ESIC's policy in respect of its contractual employees and passed the following directions:

“8. In terms of the last order dated 8th December, 2021, the list of workers supplied by the



contractor/sub-contractor is stated to have been filed yesterday night. However, the same is not on record. Copy of the list, which was served upon the Id. Counsel for the Petitioner, has been handed over to the Court. A perusal of the said list shows that out of 85 employees, the date of joining and qualification requirement has not been mentioned qua 72 employees.

9. Mr. Abhik, Id. Counsel for the Respondent/ESIC submits that the date of joining and the qualification requirement has not been mentioned in the said list as the ESIC is not aware since when the said employees have been working.

10. In the opinion of this Court, this cannot be an acceptable explanation. The said employees were working with the ESIC and are also stated to be working with the ESIC presently as well. The ESIC ought to have in its records their date of joining, even though they are contractual employees.

11. Moreover, in the present case, the Court has noticed that the contractors are being changed from time to time, Further, old employees, who have worked with the ESIC for 10 to 15 years, have been discontinued without any reason. In this respect, the stand of the ESIC is that the ESIC tries to accommodate the old employees as much as possible. On the other hand, Ld. Counsel for the Petitioners/Workmen, submits that in the ESI Hospital, Okhla as also ESI Hospital, Jhilmil, new contractual employees have been taken into service, after the filing of the present petitions.

12. Under these circumstances, it is necessary to ascertain as to what is ESIC's policy in respect of contractual employees. The list of employees in terms of the last order also is directed to be placed on record. All the W.P.(C) 705/2020 & 5691/2021 Page 7 of 7 previous orders of this Court shall be complied with by the next date. Let an affidavit be placed on



record giving the information sought by the previous orders.

13. Considering that there has been repeated non-compliance of the previous orders passed by this Court, as also the fact that a clear policy in respect of the contractual employees has not been placed on record, Mr. Mukhmeet S. Bhatia (IAS), Director General, ESIC and Dr. Deepak Kumar Sharma, Medical Commissioner, ESIC to join the virtual proceedings on the next date.”

10. It was thus noticed by the Court that contractual workers who had worked for 10-15 years were suddenly discontinued. In view thereof, on 6th January, 2022, this Court, after hearing the Counsels, *inter alia* issued the following directions towards framing of a broad policy with respect to the Workmen and their employment, in all the establishments of the ESIC:

“i. ESIC shall constitute a committee in order to frame a broad policy for all its establishments in respect of contractual workers. Let the details of the said Committee be placed on record by the next date of hearing.

ii. The said Committee shall consist of at least two experts, two representatives from the Workmen and two representatives from the Contractors, as also other officials, as the ESIC deems appropriate, in order to frame the proposed policy.

iii. The proposed policy would take into account all the requisite measures that need to be employed to ensure that the interests of the contractual workers is not adversely affected in any manner.

iv. The said committee shall also look at the terms and conditions that should be incorporated in agreements which would be entered into by the ESIC with the contractors.

v. The issue relating to engagement of PSUs, which in-tum, engage third parties as sub-contractors and



whether the same ought to be permitted, would also be considered by the said committee.”

11. The Court, on 6th January, 2022, while considering the position of the Petitioners/Workmen, observed that since the earlier contractor's term is stated to be expiring in March, 2022, the ESIC shall consider accommodating the Petitioners/Workmen who have been serving the ESIC for the last 10 to 15 years. The relevant portion of the order dated 6th January, 2022 is extracted hereinunder:

“10. Insofar as the present Petitioners/Workmen are concerned, since the earlier contractor's term is stated to be expiring in March, 2022, the ESIC shall consider accommodating the Petitioners/Workmen who have been serving the ESIC for the last 10 to 15 years, in case a new contractor is being engaged or if the earlier contractor is being granted an extension. The same shall, however, be without prejudice to the remedies that the Petitioners/Workmen may avail of, in accordance with the law, in respect of their employment and their alleged termination by the contractor.”

12. In terms of the directions passed on 6th January, 2022, the ESIC on 14th February, 2022 placed an affidavit on record giving the details of the committee which was directed to be constituted in order to frame a broad policy for all the establishments of ESIC in respect of its contractual workers. Further, with respect to the direction passed on 6th January, 2022 regarding accommodating the Petitioners/Workmen to the ESIC, it was submitted on behalf of Id. Counsel for ESIC that the ESIC, though having various dispensaries and hospitals in Delhi, the present petitions relate to only the ESIC hospital in Basai Darapur, Delhi. It was further submitted by



the Id. Counsel that the Respondent No. 6- Uttar Pradesh Rajkiya Nirman Nigam Ltd. (‘UPRNNL’) had been given the contract in some of the other dispensaries. However, the UPRNNL was not willing to consider accommodating the Petitioners/Workmen until and unless specific directions to that effect are given by the ESIC. In light of these submissions, the Court observed that the order dated 6th January, 2022 clearly directed that the ESIC shall consider accommodating the Workmen who have been serving the ESIC for the last 10 to 15 years. Further, Id. Counsel for the Workmen was directed to make a representation on behalf of the Workmen to the ESIC, which was further directed to ensure that some preference with regard to employment be given to the contractual employees of the ESIC who have served the organisation for a long period of time. The relevant portion of the order dated 14th February, 2022 is extracted hereinunder:

“8. In view of the above direction, Mr. Singh, Id. Counsel for the Workmen may make a representation on behalf of the Workmen to the ESIC. Let the same be forwarded to Mr. Manish Kumar Saran and Mr. Abhik, Id. Counsels for ESIC, who shall take up the matter with the concerned Contractor, so that some preference can be given to the contractual employees who have served ESIC for a long period of time. Let a decision with regard to the said representation be taken by the ESIC, on or before 15th March, 2022.”

13. On 30th March, 2022 it was submitted on behalf of the ESIC that the representation of the Petitioners/Workmen who were seeking employment had been considered in a meeting and the decision of the meeting will be communicated to the Workmen within five days. On the said date, it was further submitted that out of 42 employees, 17 were taken back on



employment. However, out of the 14 Workmen which are Petitioners in the present case, only 1 person was re-employed. The Court then directed the ESIC to file an affidavit ascertaining the status of all the Petitioners before this Court seeking employment. The relevant portion of the order dated 30th March, 2022 is extracted hereinunder:

“4. On behalf of Respondent Nos.1 and 2- Employees State Insurance Corporation (hereinafter as ‘ESIC’), it is submitted that the representation of the Petitioners/Workmen who are seeking employment has been considered in a meeting yesterday and the minutes have been drawn. Let the decision be communicated to the Petitioners/Workmen within five days.

5. It is also submitted that out of 42 employees, 17 have been taken back on employment. Out of the 14 Workmen which are before this Court as Petitioners, only 1 person has been re-employed. Let an affidavit to this effect giving the status of all the Petitioners before this Court seeking employment, be filed by the ESIC, at least one week before the next date.”

14. The matter was taken up for hearing on 20th May, 2022 wherein it was submitted by Id. Counsel for the ESIC that the ESIC had drafted the policy with respect to contractual workers of the ESIC and the same had been forwarded to the Ministry of Labour and Employment. Further, insofar as the Petitioners/Workmen were concerned, it was stated on behalf of the ESIC that nine vacancies had arisen at the ESI Hospital, Okhla for which, the names of three of the Petitioners/Workmen have been forwarded to the ESIC, for consideration. The Court then listed the matter for the next date with the direction that whenever fresh vacancies arise, the ESIC shall try to accommodate the Petitioners/Workmen with the contractors. The relevant



portion of the order dated 20th May, 2022 is extracted hereinunder:

“3. Today, ld. Counsel for ESIC submits that the said Committee has submitted its report giving the recommendations as to how to deal with the contractual employees of the ESIC, sometime in April, 2022, and the same has been forwarded to the Ministry.

4. Insofar as the Petitioners herein are concerned, there is stated to be some progress. Nine vacancies are stated to have arisen at ESI Hospital, Okhla. The same had certain eligibility criteria. The details of the Petitioners were sought for from the counsels. It is submitted that one of the counsels responded and names of three of the Petitioners/Workmen have been forwarded to the ESIC, and the same is now being considered by the Contractor. The said Petitioners/Workmen are to meet the Contractor next week. Let the said candidature be considered. In addition, whenever further fresh vacancies arise, they shall be tried to be accommodated with the Contractors.

5. Let a fresh status report in respect of the Committee’s recommendations as also the status of the Petitioners be placed on record by the ESIC, by 25th July, 2022.”

15. Due to the policy still not being placed on record, on 5th August, 2022, the Court while issuing notice to the Ministry of Labour and Employment, observed that the Petitioners were contractual employees who were working with the ESIC for years. However, despite the number of years of service rendered by the Petitioners, as also, repeated directions issued by the Court, the ESIC and the Contractors had failed to accommodate the Petitioners. The Court then passed the following directions on 5th August, 2022:

“6. It is noticed that the Petitioners were contractual



employees who were working with the ESIC for years. Despite the number of years of service rendered by the Petitioners, as also, repeated directions issued by this Court, the ESIC and the Contractors have failed to accommodate the Petitioners.

7. Accordingly, let the authorized representative of the present Contractor -M/s. WAPCOS Ltd. remain present in Court, on the next date of hearing. The Petitioners shall also remain present in Court, on the next date. Ld. Counsel for Petitioner shall inform Ld. Counsel for M/s. WAPCOS Ltd., of the present order.

8. As also recorded in the order dated 20th May, 2022, the Committee's report, giving the recommendations in respect of contractual employees of the ESIC, is stated to have been forwarded to the Ministry of Labour and Employment. The same is stated to be pending with the said Ministry for approval.

9. Accordingly, issue notice to the Ministry of Labour and Employment, Government of India. Mr. Harish V. Shankar, Ld. CGSC, accepts notice. Ld. CGSC shall ascertain the status of the Committee's recommendations, and place on record a status report in respect of the said recommendations made by the ESIC."

16. The Contractor was thus directed to appear before the Court. Notice was also issued to the Ministry of Labour and Employment. In terms of the directions of this Court passed on 5th August, 2022, on 9th January, 2023 two affidavits dated 15th October, 2022 and 7th January, 2023 were handed over to the Court. The said affidavits were deposed by Dr. Sanjay Kumar Mishra, Medical Superintendent, C/o E.S.I. Model Hospital, Near E.S.I. Metro Station, Basaidarapur, Right Road, New Delhi-110015. On a perusal of the two affidavits, the Court observed that the affidavit dated 7th January, 2023



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states that the ESIC has made an effort to accommodate as many old contractual workers as possible. The said workers were stated to be working in the ESIC Model Hospital, Basaidarapur. It further stated that instructions have also been given to the Project Management Consultant *i.e.* M/s UPRNN Ltd. in respect of 32 dispensaries under the Regional Office-Delhi that the that M/s UPRNN Ltd. should deploy the maximum number of older workers, who are already working on-site and fulfilling the eligibility criteria of the ESIC. An assurance is also stated to have been given by M/s UPRNN Ltd. that they will endeavour to carry out the instructions given by the ESIC. It was further stated in the affidavit dated 7th January, 2023 that out of the Petitioners, one Workman namely, Mr. Prahlad Kumar, has joined the ESIC dispensary. In addition, Mr. Umesh Kumar has also joined the E.S.I.C. Model Hospital, Basaidarapur. The remaining two Workmen who were offered the vacancy are stated to have not turned up or joined.

17. It was further submitted on 9th January, 2023, by Id. Counsel for M/S WAPCOS Ltd. that at the ESI Model Hospital Basaidarapur, there were a total of 85 workers who were contractually engaged, out of which, 72 workers were old workers of the ESIC, who were working under earlier contracts. The Court then directed M/S WAPCOS Ltd. to file an affidavit to the effect that it has not engaged any fresh contractual employees. The Court also observed that as far as contractors and sub-contractors of ESIC are concerned, it is expected that the ESIC will accommodate older contractual workers. The relevant portion of the order dated 9th January, 2023 is extracted hereinunder:

“4. Today, two affidavits, dated 15th October, 2022 and 7th October, 2023, have been handed over to



the Court. The said affidavits have been disposed by Dr. Sanjay Kumar Mishra, Medical Superintendent, C/o E.S.I. Model Hospital, Near E.S.I. Metro Station, Basaidarapur, Right Road, New Delhi-110015.

5. This Court has perused the said affidavits. Upon a perusal of the affidavit dated 7th January, 2023, it is noticed that certain annexures which are mentioned in the said affidavit are not annexed thereto. The said affidavits are also not on record. The text of the affidavit dated 7th January, 2023 states that the ESIC has made an effort to accommodate as many old contractual workers as possible. The said workers are working in the E.S.I.C. Model Hospital, Basaidarapur, as per the orders of this Court. Further, instructions have also been given to the Project Management Consultant i.e., M/s UPRNN Ltd., in respect of 32 Dispensaries under the Regional Office – Delhi, that M/s UPRNN Ltd. should deploy the maximum number of older workers, who are already working on-site and fulfilling the eligibility criteria of the ESIC. An assurance is also stated to have been given by M/s UPRNN Ltd. that they will endeavor to carry out the instructions given by the ESIC.

6. It is further submitted in the affidavit dated 7th January, 2023 that, out of the Petitioners, one Workman namely, Mr. Prahlad Kumar, has joined the ESIC dispensary. In addition, Mr. Umesh Kumar has also joined the E.S.I.C. Model Hospital, Basaidarapur. The remaining two Workmen who were offered the vacancy are stated to have not turned up or joined.

7. Further, insofar as the broad policy is concerned, the following averments have been made in the affidavit dated 15th October, 2022:

“9. I, say that the Committee Report dated 06.04.2022 on engagement of contractual manpower in establishment of ESIC was



submitted before the Hon'ble Labour and Employment Minister for approval.

10. I, say that it was directed to obtain legal and finance opinion on some recommendation of Committee Report.

11. I, say that the policy, drafted on the basis of Committee Report and legal and finance opinion, was again submitted for kind approval of Hon'ble Labour and Employment Minister.

12. I, say that Secretary, Ministry of Labour and Employment, after discussing the matter with Director General, ESIC directed to first seek the approval of ESI Corporation in the next Corporation Meeting. Therefore, the draft policy has been sent to Corporate Cell to include it as an agenda item for seeking approval of Corporation in the next Corporation Meeting. The said meeting was earlier scheduled on 07.10.2022 and 08.10.2022 but the same has been postponed and the revised date has not been finalized/intimated by the Corporate Cell. The copy of agenda item sent to Corporate Cell is annexed herewith as Annexure 5.

13. I, say that the draft policy once approved by the ESI Corporation, the same will be submitted before Hon'ble Labour and Employment Minister for approval”

8. Thereafter, in the affidavit of 7th January, 2023, it has been stated as under:

“12. I, say that Secretary, Ministry of Labour and Employment, after discussing the matter with Director General, ESIC directed to first seek the approval of ESI Corporation in the next Corporation Meeting.



13. That the draft policy on engagement of contractual manpower in establishment of ESIC was placed before the corporation in 189th meeting held on 3rd and 4th December, 2022 for its approval. After considering the draft policy, observed that the feedback from all the fields offices and corporation members should be also be obtained and incorporated to have broad policy. Suggestions have been sought from all the members of ESIC and heads of field units (Regional offices, Sub- Regional Offices, ESIC Hospitals ESIC Medical Educational Institutions) in order to frame an effective policy on engagement of contractual manpower in establishment of ESIC

14. I say that the draft policy once approved by the ESI Corporation, the same will be submitted before Hon'ble Labour and Employment Minister for approval."

9. The said draft policy has not been placed on record. In view of the above averments, it is expected that the steps towards finalizing the draft policy shall be taken in an expeditious manner. Let the said draft policy, along with the affidavit of either the Director General, ESIC, or a duly authorised and competent senior official of the ESIC, giving the latest status in respect thereof, be filed at least two weeks before the next date of hearing.

10. **Ld. Counsel for M/s. WAPCOS Ltd. submits that currently, at E.S.I. Model Hospital, Basaidarapur, there are 85 total workers who have been contractually engaged, out of which, 72 workers are old workers working under earlier contracts. Let an affidavit be filed to the effect that, after 5th August, 2022, M/s. WAPCOS Ltd. has not engaged any fresh contractual employees.**



11. Insofar as the contractors and sub-contractors are concerned, it is expected that the ESIC's stand in respect of the accommodation of the older contractual workers, as expressed before this Court today, shall be duly complied with by the said entities as well, failing which, strict action would be liable to be taken, in accordance with law.

12. Let the affidavits dated 15th October, 2022 and 7th January, 2023, along with the requisite annexures, be brought on record, within two weeks. Advance copies of the said affidavits be served upon Id. Counsel for the Petitioners."

18. On 6th December, 2023 it was submitted on behalf of the Petitioners that the contractor of ESIC-M/s WAPCOS Ltd. had not given employment to Mr. Mohit, Mr. Mahesh and Mr. Hetram as also the number of contractual workmen has been reduced from 85 to 79. In view of these submissions, the Court passed strict directions to M/s WAPCOS Ltd. to deploy all the three said workmen in any establishment within the Delhi/NCR region.

19. In compliance of the directions passed by the Court on 6th December, 2023, it was submitted on behalf of M/s WAPCOS on 13th February, 2024 that Mr. Mohit, Mr. Mahesh, and Mr. Hetram have been given re-employment. In view thereof, the Court observed that the remaining workmen are permitted to avail of their remedies in accordance with law and the only outstanding issue that remains in these petitions are with respect to the framing of a broad policy by the ESIC for its contractual Workmen. The relevant portion of the order dated 13th February, 2024 is extracted hereinunder:

"7. On behalf of the M/s. WAPCOS Ltd., it is submitted that Mr. Mohit, Mr. Mahesh, and Mr. Hetram - all three have been given re-employment. All the



remaining workmen are permitted to avail of their remedies in accordance with law. Only outstanding issue in these petitions would now be in respect of the policy, which is to be finalized by the Ministry and ESIC.”

20. Thus, in so far as the Petitioners are concerned, the Court permitted them to avail of their remedies. However, in so far as framing of a broad policy by the ESIC for its contractual workmen, was concerned, directions were issued from time to time by this Court, including orders dated, 9th January, 2023, 6th December, 2023, 13th February, 2024, 4th May, 2024 and 7th May, 2024.

21. On 7th May, 2024, Mr. Akshay Kalra, Insurance Commissioner, ESIC had appeared before the Court and informed that the draft policy was ready after extensive stakeholder consultation. The same had been placed before the Standing Committee of the ESIC and ESIC Corporation. Accordingly, the Court directed that the meeting of the Standing Committee and the ESIC be convened expeditiously and status of the policy be submitted to the Court on the next date of hearing. Further, the Court directed that the affidavit be filed. The relevant portion of the order dated 7th May, 2024 is extracted hereinunder:

“8. However, Mr. Kala, who is present, upon being queried, submits that the draft policy is now ready, after extensive stakeholder consultations, and it is scheduled to be placed before the Standing Committee of the ESIC and the ESI Corporation at the next meeting. It is stated that this meeting is to take place immediately after the General Elections.

9. Let the meeting of the Standing Committee and Corporation be convened no later than 31st July, 2024, and the status of the policy be submitted to the Court



before the next hearing date.

10. Let the affidavit handed over to the Court be placed on record and served upon the ld. Counsels for all the Petitioners. Mr. Akshay Kala, Insurance Commissioner, ESIC shall remain present in Court on the next date of hearing to update the Court of the status.”

22. Today, in compliance of the order dated 7th May, 2024, the affidavit has been furnished. The same has been deposed by Mr. Akshay Kalra, Insurance Commissioner, ESIC who is present in Court. Mr. Kalra informs the Court that the broad guidelines with regard to engagement of the contractual workers within ESIC have been formulated and the said proposed guidelines have also been put up on the websites today *i.e.* on 18th October, 2024. The details of the guidelines are as under:

“3. Pursuant to the directions of the Hon'ble High Court vide order dated 30.08.2024, broad guidelines for the engagement of contractual manpower within ESIC establishments have been formulated in accordance with the judgment of the Hon'ble High Court of Delhi in W.P.(C) 4834/2020 (All India General Kamgar Union vs. Union of India & Ors.) wherein the contract workers employed at Lady Hardinge Medical College and Hospital had challenged the unlawful termination of their services. The proposed broad guidelines in line with the above judgement and recommendations of the Committee constituted as per the directions of Hon'ble High Court have been submitted before the Competent Authority for final approval.

4. The key provisions of the guidelines are as follows:

(i) The selection of agencies should invariably be done on the basis of Quality cum Cost Based Selection



(QCBS) criteria (70:30 for Technical and Financial evaluation) to ensure that only professional and competent contractors are awarded contracts so that the Statutory rights of the contractual manpower are protected.

(ii) The interests of contract workers are protected by provisions of Labour Laws where responsibilities of contractor/employer/principal employers are mentioned.

(iii) At the start of new contract, all the workers deployed by the Outsourcing agencies should be disseminated information with respect to their entitlement, their responsibilities, wage details and Grievance Redressal Mechanism by the principal employer to increase awareness of the workers and to have a transparent system;

(iv) With the commencement of the contract, the HOD concerned shall submit an undertaking for himself and obtain similar undertakings from all ESIC employees under him to the effect (a) that there is no instance of conflict of interest in respect of the contract on the part of any one of them; and (b) that none of their relatives, etc. are engaged by the agency as workers.

(v) Sub-contracting or execution contracting, in case of work contract, may be continued as work contracts (ARM/SR/Capital Works) are generally awarded to CPWD/other PSUs in accordance with Rule 133 of GFR, 2017, as amended;

(vi) A contractor/sub-contractor (in case of work contract) shall not charge or collect any fee for engaging or employing workers for their deployment. Any such activity will amount to violation of the terms of the contract and the principal employer will be free to take appropriate action against the contractor as per applicable laws, rules and policies in this regard which may include termination of the contract,



blacklisting of the contractor, etc;

vii) Contractor shall ensure to obtain written undertaking from every worker deployed by it that he/she shall have no claim for any job in ESIC. Such undertaking from each deployed manpower shall be submitted to ESIC before deployment during the currency of contract;

viii) The Outsourcing agency shall provide a Grievance Redressal Mechanism for contract workers by putting a complaint box in a prominent place in the premises of ESIC field units, so that any contractual workers who have complaints against the contractors would be able to submit their complaints in those boxes;

*(ix) The manner in which the contractor engages manpower and cases of disengagement from work, if any, would entirely be under the purview of the contractor to decide. **However, as far as possible, attempt shall be made by the contractors to engage the willing and suitable manpower from the previous contractor as long as there are no complaints against them.** The continuation of contractual workers shall always be in accordance with law and this will not be construed as giving any permanence to the contractual employees*

(x) On termination/expiry of the contract of an outsourcing Agency, ESIC would not be responsible for the re-employment of the workers.”

23. The Court has perused the above broad guidelines, which clearly record that whenever contractors/employers are engaged, the contractors shall make an attempt to engage the existing employees from the previous contractor so long as there are no complaints against them. The same would be in accordance with law. Such a practice shall ensure that existing workers are not deprived of their livelihood, whenever contractors are changed –



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albeit subject to the exception that they have displayed good conduct and there are no complaints against them.

24. After perusing the above guidelines, this Court is of the opinion that the above guidelines ought to be notified at the earliest so that the contractors are unable to indulge in mal-practice including taking of commissions, illegal deduction in salaries and arbitrary discontinuation of existing contractual employees. The guidelines, which have been proposed today, shall be notified to all contractors at the time of engagement by the ESIC. All contractors shall be bound by the said guidelines.

25. Accordingly, let the guidelines be notified within a period of one month from today. The affidavit, which has been handed over today, is taken on record. Let the copy of the same be supplied to Mr. F.K. Jha, Id. Counsel for the Petitioner.

26. The present writ petitions are disposed of in the above terms. No further orders are called for. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

OCTOBER 18, 2024/dk/rks
(Corrected and uploaded on 23rd October 2024)